REMARKS

In the Office Action mailed May 7, 2007 the Examiner noted that claims 1-13 were pending and rejected claims 1-13. No claims have been amended, no claims have been canceled, no new claims have been added and, thus, in view of the forgoing claims 1-13 remain pending for reconsideration which is requested. No new matter has been added. The Examiner's rejections are traversed below.

REJECTIONS under 35 U.S.C. § 101

Claims 9-12 stand rejected under 35 U.S.C. § 101 non-statutory subject matter. Specifically, the Examiner asserted that the apparatus is software per se. MPEP 2601(IV)(B)(2)(a) states "If a claim defines a useful machine or manufacture by identifying the physical structure of the machine or manufacture in terms of its hardware or hardware and software combination, it defines a statutory product. See, e.g., *Lowry*, 32 F.3d at 1583, 32 USPQ2d at 1034-35; *Warmerdam*, 33 F.3d at 1361-62, 31 USPQ2d at 1760." Claim 9 contains the feature of "a plurality of service servers each rendering a service via a network." Claim 10 likewise has the feature of "service servers grouped according to quality levels of the services provided." As each of claims 9 and 10 contains a feature related to hardware or hardware software combination (i.e. servers) each claim is therefore statutory. Claims 11 and 12 are each statutory as depending from claim 10.

While the Applicant need not apply the judicial exception test "useful, concrete and tangible result" to the present claims, reducing a load on a service server within any of the plurality of groups by using at least one service server with the lightest load as in claim 9 is a useful, concrete and tangible result. Likewise preferentially processing service request with a high service level requirement as in claim 10 is a useful, concrete, and tangible result.

Withdrawal of the rejection is respectfully requested.

REJECTIONS under 35 U.S.C. § 103

Claims 1-13 stand rejected under 35 U.S.C. § 103(a) as obvious over Choquier, U.S. Patent No. 5,951,694 in view of Donaghue, U.S. Patent No. 6, 226, 377. Choquier is directed to a system of reconfiguring servers in to particular server groups depending on the need of the server group. Donaghue is directed to assigning a server to the highest priority transaction level that has a pending transaction.

On page 5 of the Office Action, it is stated that "Donaghue further teaches the service

request with a high service level requirement is preferentially processed while still processing service requests of a low level service level requirement (see lines 15-25 of column 3)." The Applicant respectfully disagrees with the assertion and traverses the rejection with an argument. Donaghue does not process request of low level service requirements when higher level requests are being processed. Donaghue col. 3 lines 15-25 merely discusses that each application has priority levels. Not that the lower level service requests are still processed when the system is saturated. Donaghue Fig. 3 clearly shows that server is only assigned to priority level 100 (314) (lowest level priority) when no other higher priority level transactions are available. Further, in the *Response to Arguments* on page 10 of the Office Action, it is stated that Donaghue col. 3, lines 50-52 "teaches all service levels have there requests processed." Donaghue col. 3 lines 50-52 states:

> Where adequate numbers of servers are available, however, the facility permits applications in all priority levels to reach their service level goals.

A feature of the claims is to prioritize service request in a system that has a limited number of servers by moving servers from one priority group to another. In the case where an adequate number of servers are available, there is no need to prioritize. Therefore, the combination of Choquier and Donaghe taken separately or in combination, fails to teach or suggest "wherein the service request with a high service level requirement is preferentially processed while still processing service requests of a low service level requirement."

On page 5 of the Office Action, it is stated:

> It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system and method of Choquier with the above teaching of Donaghue in order to more effectively utilize the available resources and maintain service level agreements as suggested by Donaghue. (see lines 55-58 of column 1).

The Applicant respectfully disagrees with the assertion of the Office Action and traverses the rejection with an argument. The cited references teach away from the combination and the resulting combination would not function.

The Office Action at page 4 asserts that Choquier col. 23, lines 36-48 teaches or suggests "managing the plurality of service servers by dividing the service servers to define a plurality of groups of service servers depending on quality levels of rendered services, and an intermediate server group of service servers which offer low level service among the service servers at a normal time and dynamically shift service servers among the plurality of groups and

render a service as a service quality of a group to which the shift is made." The Office Action further asserts that Choquier col. 24, lines 34-53 teach or suggest "reducing a load on a service server within any of the plurality of groups by using at least one service server with the lightest load within the intermediate server group as the service server within any of the plurality of groups, when the load on the service server within any of the plurality of groups increases, and a quality level to be rendered by any of the plurality of groups cannot be maintained." Choquier col. 2, lines 1-11 states

> In a preferred embodiment, the application servers of the system are interconnected by a local area network, and are arranged into service groups, with each service group corresponding to a particular service. Each application server of a service group is preferably a "replicated" version of the other application servers within the service group, meaning that each runs the same server application (or server applications) as the others to implement a common service. For example, application servers within a bulletin board system ("EBBS") service group all run a BBS server application.

Thus, Choquier discusses the creation of groups of servers, for instance BBS Server Group 304 as in Fig. 3. The servers within the group all run a single application. BBS Server Application.

Whereas, the Office Action, relies on Donaghue to teach "the service servers are grouped depending on quality levels of the rendered services into high, low and intermediate service groups." Donaghue does not reassign servers between the server groups. Donaghue at column 3, lines 27-37 states:

> In contrast to **conventional transaction processing systems that attempt to assign each newly-arrived transaction to a server**, the facility of the present invention **assigns each newly-available server to a transaction**. Such assignment takes place each time a server becomes available, either when an existing server completes the processing of the last transaction that it was assigned to process, or when a new server arrives. The **assignment process involves "offering" use of the server for use by each priority level of applications in sequence**, from the highest priority level to the lowest priority level, until a priority level accepts use of the server. [Emphasis added]

Thus, Donaghue discusses assigning servers to transactions. As discussed above, Choquier has groups of servers wherein all transactions of that service group run. Thus, Donaghue and Choquier each handle transactions in manner that are opposite of each other, one assigning servers to a transaction, the other assigning a transaction to a group of servers. Therefore, the resulting combination would not function. Further, as emphasized above, Donaghue states "conventional transaction processing systems that attempt to assign each newly-arrived transaction to a server." Thus, Donoghue believes that the system of Choquier is deficient,

therefore teaching away from combination of the two systems.

For at least the reasons stated above, the combination of Choquier and Donaghe taken separately or in combination, fails to teach or suggest the features of claims 1, 6-10 and 13 and the claims dependent therefrom.

As regards claim 12, the combination of Choquier and Donaghue fail to teach or suggest "wherein said load shifting unit reduces the load on the selected server by shifting a portion of the load from the selected server to at least one intermediate server having a lightest load among the intermediate servers."

Withdrawal of the rejections is respectfully requested.

SUMMARY

It is submitted that the claims satisfy the requirements of 35 U.S.C. § 101. It is also submitted that claims 1-13 continue to be allowable. It is further submitted that the claims are not taught, disclosed or suggested by the prior art. The claims are therefore in a condition suitable for allowance. An early Notice of Allowance is requested.

If any further fees, other than and except for the issue fee, are necessary with respect to this paper, the U.S.P.T.O. is requested to obtain the same from deposit account number 19-3935.

Respectfully submitted,

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